

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**HORATIO M. NIMLEY,**  
**Plaintiff,**

**v.**

**JAMES, *et al.*,**  
**Defendants.**

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**CIVIL ACTION NO. 22-CV-4145**

**ORDER**

AND NOW, this 17th day of March 2023, upon consideration of Horatio M. Nimley's Motion to Proceed *In Forma Pauperis* (ECF No. 8), Prisoner Trust Fund Account Statement (ECF No. 9), and *pro se* Amended Complaint (ECF No. 10), and Motion to Appoint Counsel (ECF No. 11), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Horatio M. Nimley, #22-04014, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of the Montgomery County Correctional Facility or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Nimley's inmate account; or (b) the average monthly balance in Nimley's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Nimley's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding

month's income credited to Nimley's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Warden of the Montgomery County Correctional Facility.
4. The Complaint and Amended Complaint are **DEEMED** filed.
5. The Amended Complaint is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction for the reasons in the Court's Memorandum.
6. The Motion to Appoint Counsel is **DENIED as moot**.
7. The Clerk of Court shall **CLOSE** this case.

**BY THE COURT:**

**/s/ Chad F. Kenney**

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**CHAD F. KENNEY, J.**